UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

UBS Financial Services, Inc., Plaintiff, v. Banco Popular de Puerto Rico, Mariel Babcock, Edward Walter Smith, in his capacity as Personal Representative of the Estate of Mark Richard Babcock Defendants.	Civil Action No.: 6:17-cv-00607-MGL

COMPLAINT FOR INTERPLEADER

Plaintiff, UBS Financial Services, Inc. ("UBS"), by counsel, brings the following Complaint for Interpleader against Defendants Banco Popular de Puerto Rico ("BPPR") Mariel Babcock, and Edward Walter Smith, in his capacity as Personal Representative of the Estate of Mark Richard Babcock, and in support of same states the following:

PARTIES

1. UBS is a brokerage firm organized and existing under the laws of Delaware with its principal place of business at 1000 Harbor Boulevard, Weehawken, New Jersey 07086.

2. Upon information and belief, BPPR is a corporation organized and existing under the laws of the Commonwealth of Puerto Rico with a registered agent and business mailing address listed with the Puerto Rican Secretary of State at Popular Center Building, Suite 913, 209 Muñoz Rivera Avenue, San Juan, Puerto Rico 00918.

3. Upon information and belief, Mariel Babcock is an individual, and is a citizen and domiciliary of South Carolina, whose last known address is 3 Woodberry Drive, Greenville, South Carolina 29615-3980.

4. The Estate of Mark Richard Babcock is an open probate estate opened on or about July 14, 2015 in the Probate Court for the County of Greenville, South Carolina in order to probate the Last Will and Testament of Mark Richard Babcock, who was a citizen and resident of Greenville County, South Carolina on the date of his death.

5. Upon information and belief, Edward Walter Smith is an individual, a citizen and domiciliary of Michigan, and is the duly appointed Personal Representative for the Estate of Mark Richard Babcock.

JURISDICTION AND VENUE

6. This action is brought pursuant to the provisions of 28 U.S.C. §§ 1335 and 2361.

7. This Court has jurisdiction in this matter under 28 U.S.C. § 1335 because this is an interpleader action involving a dispute over the superior ownership of and right to funds in an Individual Retirement Arrangement ("IRA") account in an amount greater than $500, there are at least two Defendants of diverse citizenship with adverse claims to the assets, and UBS seeks to give a bond payable to the clerk of the Court in the amount and with the surety that the Court deems proper.

8. Venue is proper in the Court under (*i*) 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claim occurred in this judicial district, and (*ii*) 28 U.S.C. § 1397 because at least one defendant claiming right to the disputed funds resides in this judicial district.

SUMMARY OF ADVERSE CLAIMS

Mariel Babcock Inherits Her Deceased Husband's UBS IRA Account.

9. Mariel Babcock is the widow of Mark Richard Babcock, who died on or about July 4, 2015 in Greenville, South Carolina.

10. Prior to his death, Mark Richard Babcock possessed a traditional IRA account in his name, designated by UBS account number BLXXX13 (the "Mark Babcock IRA Account"). The Mark Babcock IRA Account was opened, managed, and administered by UBS in its office in Greenville, South Carolina.

11. The Mark Babcock IRA Account was what is known as a "transfer-upon-death" account, meaning that, by contract between UBS and Mark Richard Babcock, the Mark Babcock IRA Account would automatically transfer to the designated beneficiary(ies) listed on the account upon receipt by UBS of appropriate notice and proof of Mark Richard Babcock's death.

12. Prior to his death, Mark Richard Babcock designated his wife, Mariel Babcock, as the sole beneficiary of the Mark Richard Babcock IRA Account assets.

13. On or about July 13, 2015, UBS received notification that Mark Richard Babcock had died on July 4, 2015.

14. At the time that UBS received notification of Mark Richard Babcock's death, the value of the Mark Babcock IRA Account was approximately $1,478,540.

15. Following UBS's receipt of notification of Mark Richard Babcock's death, on or about July 16, 2015, the sole beneficiary listed on the Mark Babcock IRA Account, Mariel Babcock, completed and submitted the appropriate UBS IRA Beneficiary Processing Form to process the transfer of the assets of the Mark Babcock IRA Account. Mariel Babcock's submission of the IRA Beneficiary Processing Form caused UBS to open an IRA

beneficiary account called "Mark Richard Babcock Traditional IRA FBO Mariel Babcock," under new account number BLXXX32 (the "Mariel Babcock IRA Account").

16. By virtue of Mariel Babcock's submission of the IRA Beneficiary Processing Forms and the consequent opening of the Mariel Babcock IRA Account, on or about July 23 and 24, 2015, the assets of the Mark Babcock IRA Account (account ending in BLXXX13) were transferred into the Mariel Babcock IRA Account (account ending in BLXXX32) as UBS was contractually obligated to do.

17. The Mariel Babcock IRA Account remains an active IRA account under management and administration at UBS's Greenville, South Carolina location. As of the end of February 2017, the account had a value of $1,725,211.72.

The Puerto Rican Garnishment Order.

18. On June 2, 2016, UBS received an order from a Puerto Rican Commonwealth Court directing UBS to restrict both the Mariel Babcock IRA Account and the Mark Babcock IRA Account, though the Mark Babcock IRA Account had a zero balance at that time, as a result of the July 2015 contractually required transfer of all of its assets into the Mariel Babcock IRA Account (hereinafter the "Puerto Rican Account Restriction Order"). Upon receipt of the Puerto Rican Account Restriction Order, UBS placed a restriction on the Mariel Babcock IRA Account that prohibited her from liquidating any assets in the account or withdrawing any value from the account. On June 3, 2016, UBS sent a letter concerning the account restriction and attaching a copy of the Puerto Rican Account Restriction Order by overnight courier service to the account contact

information on record. A copy of that letter and the Puerto Rican Account Restriction Order is attached hereto as **Exhibit A.**[1]

19. On June 29, 2016, UBS received an order from the Puerto Rican Commonwealth Court entitled "Order of Execution of Sentence," which purported to assert a garnishment (called an embargo in Puerto Rico) under Puerto Rican law over funds in both the Mark Babcock IRA Account and the Mariel Babcock IRA Account sufficient to satisfy a $399,738.51 judgment BPPR reportedly had obtained against Mark Richard Babcock through a foreclosure action on real property that Mark Richard Babcock owned in Puerto Rico (hereinafter the "Puerto Rican Garnishment Order"). The Puerto Rican Garnishment Order was sent to UBS with a Writ of Execution of Sentence from the Puerto Rican Clerk of Court, which stated that the Puerto Rican Garnishment Order also garnished funds sufficient to pay late fees, and attorney fees and costs associated with BPPR's enforcement of its promissory note and mortgage (hereinafter the "Puerto Rican Writ of Execution"). Both the Puerto Rican Garnishment Order and the accompanying Puerto Rican Writ of Execution stated that UBS was to cancel and sell assets in the Mark Babcock IRA Account and the Mariel Babcock IRA Account sufficient to pay the sums ordered, and pay the amount ordered to the Puerto Rican court. The Puerto Rican Garnishment Order and the Puerto Rican Writ of Execution are attached hereto collectively as **Exhibit B**.[2]

20. After receiving the Puerto Rican Garnishment Order and Puerto Rican Writ of Execution, UBS filed an Informative Motion calling the Puerto Rican court's attention to

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[1] UBS is filing the original version of the Puerto Rican court's order, which is in Spanish, and will have the document translated into English and a certified English-language version filed with the Court as soon as reasonably practicable.

[2] `UBS is filing the original version of the Puerto Rican court's order, which is in Spanish, and will have the document translated into English and a certified English-language version filed with the Court as soon as reasonably practicable.

certain facts and issues that militated against UBS liquidating assets that had been automatically transferred, as contractually required, to the Mariel Babcock IRA Account in July 2015—nearly a year before the Puerto Rican Garnishment Order and Puerto Rican Writ of Execution were obtained by BPPR.

21. On or about September 29, 2016, UBS received an order from the Puerto Rican court, dated September 23, 2016, apparently directed at UBS, instructing UBS to deposit the purportedly garnished funds into the Puerto Rican court's registry on the basis that UBS had failed to respond to an August 29, 2016 order from the Puerto Rican court requiring the defendant in the action, Mark Richard Babcock, to state his position as to the garnishment of funds to pay his judgment debt. The August 29, 2016 order was directed to Mark Richard Babcock as the defendant in the litigation, not to UBS, which was not a party to the Puerto Rican case. UBS, not being party to the Puerto Rican litigation, had not even been served with the August 29, 2016 order, and had no knowledge of its existence until it received the September 23, 2016 order.

22. On October 11, 2016, UBS filed a Motion for Reconsideration of the Puerto Rican court's September 23, 2016 order, as well as the Puerto Rican Garnishment Order, on two grounds. *First*, UBS argued that the Puerto Rican court's September 23, 2016 order enforcing its purported garnishment against Mariel Babcock's assets was reached based on either a misunderstanding or mischaracterization by BPPR of the ownership and status of the assets purportedly being garnished, and so should be vacated as a matter of Puerto Rican law. *Second*, UBS argued that the Puerto Rican court lacked jurisdiction under Puerto Rican law to garnish the assets in the two IRA accounts because (*i*) Puerto Rican garnishment law did not permit the garnishment of funds located outside of Puerto Rico with no Puerto

Rican contacts, and (*ii*) as to the Mariel Babcock IRA Account, that account is Mariel Babcock's property (and was 11 months before the Puerto Rican Garnishment Order issued) and as such Mariel Babcock was a necessary party to the Puerto Rican litigation who had not been properly joined to the action by BPPR in accordance with Puerto Rican law concerning necessary and indispensable parties to an action. On October 17, 2016, BPPR opposed UBS's Motion for Reconsideration. On November 3, 2016, UBS filed a reply in support of its Motion for Reconsideration.

23. On February 16, 2017, the Puerto Rican court denied UBS's Motion for Reconsideration.

24. On March 1, 2017, Mariel Babcock, through counsel, moved to intervene in the Puerto Rican action from which the Puerto Rican Garnishment Order issued. In her Motion to Intervene, Mariel Babcock alleges that as a matter of U.S. and South Carolina law the assets in the Mariel Babcock IRA Account ceased being Mark Babcock's property upon his death in July 2015, that the assets automatically transferred to her by contract and outside of the probate process, and that the Puerto Rican Garnishment Order is void *ab initio* and should be vacated.

25. On March 2, 2017, Mariel Babcock, through counsel, sent written correspondence to undersigned counsel for UBS that made clear she did not recognize the Puerto Rican Garnishment Order as a legitimate basis for garnishing assets in the Mariel Babcock IRA Account for payment of Mark Richard Babcock's Puerto Rican judgment, and demanded that UBS immediately remove the restriction placed on her IRA account so that she could access it. Mariel Babcock's written demand to UBS is attached hereto as **Exhibit C**.

26. The time for filing a notice of appeal of the Puerto Rican court's decision denying UBS's Motion for Reconsideration expires on March 20, 2017, and has not expired as of the date of the filing of this Interpleader action. UBS intends to file a notice of appeal of the Puerto Rican court's decision on UBS's Motion for Reconsideration, in order to appeal the issues of Puerto Rican law at issue in the Puerto Rican action.

The Competing Claims to Assets Contained in the Mariel Babcock IRA Account.

27. By virtue of the above facts, a dispute has arisen between BPPR and Mariel Babcock as to who has superior right to the sum at issue in the Puerto Rican Garnishment Order and Puerto Rican Writ of Execution, which sum can only be paid by UBS, if at all, out of assets in the Mariel Babcock IRA Account.

28. Due to this dispute, it is entirely unclear whether UBS should liquidate assets in the Mariel Babcock IRA Account in order to pay them to satisfy BPPR's apparent judgment debt against Mark Richard Babcock, or whether BPPR has no legal right to reach Mariel Babcock's assets to pay her deceased husband's mortgage debt. If the latter, then UBS should keep the Mariel Babcock IRA Account intact and continue to manage and administer it according to only Mariel Babcock's instructions, for Mariel Babcock is the owner of all assets in that account. UBS has not received a claim to the disputed assets from the Estate of Mark Babcock, but names the Personal Representative of the Estate of Mark Richard Babcock in this action because the Estate of Mark Richard Babcock is a potential claimant to the disputed assets and a necessary party to this action.

29. When presented with competing obligations as to a single instrument or set of assets in its custody or possession, UBS should not be forced to pay one adverse claimant at its peril and risk multiple liability to the other adverse claimant.

30. UBS seeks resolution of the conflicting claims in good faith, and states that it has no interest in the disputed assets other than fulfilling its obligations to pay the sums due to the appropriate party. Accordingly, UBS is a disinterested stakeholder in this action and has no independent liability to any of the Interpleader Defendants.

31. UBS has no means other than this action of protecting itself against multiple claims as to the assets disputed between the Interpleader Defendants.

32. As a result of the present controversy, UBS has had to retain undersigned counsel and has agreed to pay attorneys' fees and incur costs to pursue this action.

CLAIMS FOR RELIEF

33. Interpleader. UBS has a good-faith doubt as to whom the disputed assets in the Mariel Babcock IRA Account belong. UBS cannot pay the purportedly garnished funds to BPPR, or to the Puerto Rican court, without subjecting itself to the possibility of multiple liability. Conversely, UBS cannot decline to abide by the Puerto Rican court's garnishment order without subjecting itself to the possibility of multiple liability as a garnishee in possession of assets subject to payment in satisfaction of a valid judgment debt. UBS is a disinterested stakeholder and claims no beneficial interest in the disputed assets, except for attorneys' fees and court and other costs incurred in connection with this Interpleader action. UBS has no independent liability to any Defendant in this action. UBS desires to give bond payable to the clerk of the Court in such amount and with such surety as the Court deems proper, and will do so upon order of the Court directing appropriately.

34. Attorneys' Fees and Costs of Interpleader. UBS is entitled to its reasonable attorneys' fees and other costs incurred in connection with Interpleader action.

PRAYER FOR RELIEF

Wherefore, UBS prays that this Complaint for Interpleader be deemed good and sufficient, and for the following relief:

(a) That the Court grant UBS's Interpleader Claim, and forthcoming Motion to Interplead Bond, and direct UBS to give a bond in an amount certain and with a surety of UBS's choice or at the Court's direction, and for the Court to accept such bond into the registry of the Court;

(b) That the Defendants, for themselves, their heirs, legal representatives, successors and assigns, and all other persons claiming by, through, or under them, be enjoined for the duration of this action from instituting or prosecuting any proceeding in any state or federal court that seeks to affect the status of the Mariel Babcock IRA Account, including any action against UBS and UBS's agents and representatives based on the Mariel Babcock IRA Account;

(c) That UBS be fully and finally discharged from all liability as to the disputed assets or amounts;

(d) That the Defendants be ordered to interplead and settle between themselves their rights and liabilities for the Mariel Babcock IRA Account and the disputed assets or amounts therein;

(e) That upon final hearing or adjudication of this action, the Defendants, for themselves, their heirs, legal representatives, successors and assigns, and all other persons claiming by, through, or under them, be permanently enjoined from instituting or prosecuting any proceeding in any state or federal court against UBS and UBS's agents and representatives based on the disputed assets or amount of the Puerto Rican Garnishment Order and Puerto Rican Writ of Execution;

(f) That UBS recover from one or more of the Defendants its attorneys' fees and all costs incurred in connection with pursuing this action;

(g) That UBS be awarded any and all additional relief to which it may, or the Court determines it is, entitled.

Respectfully Submitted,

Wyche, P.A.

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